

The Minnesota Department of Education (MDE), Division of Compliance and Assistance, has developed this document to assist school districts and parents who have raised questions about related services. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice, and is not a substitute for consulting with a licensed attorney. The information below should not be relied on as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law. These questions and answers relate only to Part B of the federal regulations, not to Part C.

DEFINITIONS

Question 1: What are related services?

Answer: Related services are defined as “transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.”

Authority: 34 C.F.R. § 300.34(a)

Question 2: What services are included in related services?

Answer: Related services include “speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.”

Authority: 34 C.F.R. § 300.34(a)

Question 3: Do the federal regulations define each of the related services mentioned above and that are set forth in 34 Code of Federal Regulations, section 300.34(a)?

Answer: Yes. Each of the related services set forth at 34 Code of Federal Regulations, section 300.34(a) are further defined in the federal regulations at 34 Code of Federal Regulations, sections 300.34(c)(1) through (c)(16).

Authority: 34 C.F.R. § 300.34(c)(1)-(16)

Question 4: Are there other services that can be considered related services even though they are not mentioned in the list of related services set forth above and in 34 Code of Federal Regulations, section 300.34(a)?

Answer: Yes. As set forth in the comments to the federal regulations: “*related services* include other supportive services that are required to assist a child with a disability to benefit from special education...the list of services in § 300.34 is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. It would be impractical to list every service that could be a related service....”

Authority: 34 C.F.R. § 300.34(a) and cmts. at 71 F.R. 46569

Question 5: What is the definition of medical services as a related service?

Answer: Medical services are defined as “services provided by a licensed physician to determine a child’s medically related disability that results in the child’s need for special education and related services.”

Authority: 34 C.F.R. § 300.34(c)(5)

Question 6: Are medical services defined more broadly in the federal regulations than the narrow definition found above and in the federal regulations at 34 Code of Federal Regulations, section 300.34(c)(5)?

Answer: No. The Comments to the Federal Regulations explicitly state: “The list of related services in § 300.34 includes medical services for diagnostic and evaluation purposes consistent with section 602(26) of the [Individuals with Disabilities Education] Act. The [U.S. Education] Department continues to believe that using language from the [Individuals with Disabilities Education] Act to define medical services is essential.

Defining medical services more broadly...would not be consistent with the [Individuals with Disabilities Education] Act.”

Authority: 34 C.F.R. § 300.34(c)(5) and cmts. at 71 F.R. 46573

Question 7: Do the federal regulations differentiate between medical occupational and physical therapy services and educational occupational and physical therapy services?

Answer: No. According to the federal regulations, occupational therapy “(i) means services provided by a qualified occupational therapist; and (ii) includes --- (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; (B) Improving ability to perform tasks for independent functioning if functions are lost; and (C) Preventing, through early intervention, initial or further impairment or loss of function.”

According to the federal regulations, physical therapy “means services provided by a qualified physical therapist.” As set forth in Question 5 above, according to federal special education law, medical services are for diagnostic and evaluation purposes, and both occupational therapy and physical therapy are not delineated as either educational or medical.

The Minnesota special education rules and statutes do not define medical services, occupational therapy services, and physical therapy services.

Authority: 34 C.F.R. § 300.34(c)(5),(6), and (9)

Question 8: Are school nursing services considered to be a related service according to the federal regulations?

Answer: Yes. As defined in the federal regulations: “School health services and school nursing services means health services that are designed to enable a child with a disability to receive a free appropriate public education (FAPE) as described in the child’s IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.”

Authority: 34 C.F.R. § 300.34(c)(13)

EVALUATIONS/REEVALUATIONS

Question 9: What process is used to determine if a child is eligible to receive special education and related services?

Answer: School districts conduct a comprehensive initial special education evaluation of a child to determine whether the child qualifies as a child with a disability and the nature and extent of the educational needs of the child.

“Each student’s need for related services, like his need for special education, must be determined on an individual basis, as part of the IEP process and must be based on an assessment of the student’s individual needs.”

Authority: 34 C.F.R. §§ 300.301 and 300.304 through 300.311; and “Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations.” Revised June 2010, page 11, answer to question B-2, Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education; and *Letter to Rainforth*, 17 LRP 1295 (OSEP 1990)

Question 10: What is the definition of educational need?

Answer: Though the term “educational need” is used in the Individuals with Disabilities Education Act (IDEA), it is not defined in the federal regulations or in Minnesota’s special education

rules or statutes. However, in conducting a special education evaluation, the team is determining through a variety of assessment tools and existing data, the student's eligibility and need for special education and related services. The results of the evaluation determine the special education needs of the student. For example, Minnesota Rule 3525.0210, subparagraph 42 sets forth the areas in which a student might need "specially designed instruction [special education] and related services to meet the unique cognitive, academic, communicative, social and emotional, motor ability, vocational, sensory, physical, or behavioral and functional needs of a pupil. . . ." Results of the initial evaluation or reevaluation would show a student's educational need in each of those areas defined in Minnesota Rule 3525.0210, subparagraph 42.

Authority: 34 C.F.R. §§ 300.303 through 300.311; and Minn. R. 3525.0210, subp. 42

Question 11: Could school districts, through related services providers, provide related services to a student without initially conducting a special education evaluation?

Answer: No. School districts, specifically the child's evaluation team, must obtain parental consent and must conduct a comprehensive initial special education evaluation before the initial provision of special education and related services to a child with a disability.

Authority: 34 C.F.R. §§ 300.300(a)(1)(i) and 300.301(a)

Question 12: If a child is passing from grade to grade and is not failing school courses, could a school district conduct a special education evaluation of that child to determine whether that child is eligible for and in need of special education and related services?

Answer: Yes. A school district could conduct an evaluation and determine that a child is eligible for special education and related services even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

Authority: 34 C.F.R. § 300.101(c)(1)

Question 13: Are there circumstances, other than a special education evaluation or reevaluation, when a related services provider could conduct an assessment of a student, without parental consent and separate from the evaluation team process, to determine whether the student requires a particular related service?

Answer: As set forth in the federal regulations: "The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services."

"Screening" as used in § 300.302...refers to a process that a teacher or specialist uses to determine appropriate instructional strategies. Screening is typically a relatively simple and quick process that can be used with groups of children. Because such screening is not

considered an evaluation under §§ 300.301 through 300.311 to determine eligibility for special education services, parental consent is not required.”

Authority: 34 C.F.R. § 300.302 and cmts. at 71 F.R. 46639

Question 14: If, as the result of a screening, an observation, or for any other reason, a related services provider is concerned that a student may require special education and related services, could the related services provider initiate a request for a special education evaluation for the student?

Answer: A related services provider could identify, through a screening process or other means, children who might need to be referred for a special education evaluation, but only a parent or a school district can initiate the evaluation. As set forth in the federal regulations: “[E]ither a parent of a child or a [school district] may initiate a request for an initial evaluation to determine if the child is a child with a disability.”

As set forth in the comments to the federal regulations: “...The language does not include employees of [state educational agencies] or [school districts] (e.g., related services providers)...The requirements in § 300.301(b) pertain to the initiation of an evaluation under §§ 300.301 through 300.305 and should not be confused with the State’s child find responsibilities in § 300.111...The child find requirements permit referrals from any source that suspects a child may be eligible for special education and related services. Child find activities typically involve some sort of screening process to determine whether the child should be referred for a full evaluation to determine eligibility for special education and related services. Therefore, persons such as employees of the [state educational agency], [school district], or other public agencies responsible for the education of the child may identify children who might need to be referred for an evaluation. However, it is the parent of a child and the [school district] who have the responsibility to initiate the evaluation procedures in §§ 300.301 through 300.311....”

Authority: 34 C.F.R. § 300.301(b) and cmts. at 71 F.R. 46636

Question 15: Can a school district conduct an evaluation after the student’s initial evaluation but before the student’s three-year reevaluation if a concern arises that the student needs a related service not previously determined in the student’s initial evaluation?

Answer: Yes. The additional evaluation conducted after the initial evaluation to determine the student’s current need for a related service would be a reevaluation. As set forth in the federal regulations, school districts must ensure that a reevaluation is conducted “(a)...(1) If the [school district] determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or (2) If the child’s parent or teacher requests a reevaluation.”

To conduct the reevaluation, the school district would follow the federal regulations at sections 300.304 through 300.311, including reviewing existing data, determining what

assessment tools to use, ensuring that a variety of assessments tools are used, and ensuring that information from all sources is documented and carefully considered.

Additionally, “(b)...A reevaluation...(1) May not occur more than once a year, unless the parent and the [school district] agree otherwise; and (2) Must occur at least once every three years, unless the parent and the [school district] agree that a reevaluation is unnecessary.”

As set forth in the Comments to the federal regulations: “An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under [IDEA], and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under [IDEA], and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation.”

Pursuant to Minnesota Rule 3525.2710, subparagraph 6, the school district must provide an evaluation report to the parents within the 30-day evaluation timeline each time a reevaluation is conducted.

Authority: 34 C.F.R. §§ 300.303 through 300.311 and cmts. at F.R. 71 46640; and Minn. R. 3525.2710, subp. 6

Question 16: When is it necessary to conduct a reevaluation to determine whether a student needs additional or new related services?

Answer: A school district must ensure that a reevaluation of each child with a disability is conducted “(a)...(1) If the [school district] determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant an evaluation; or (2) If the child’s parent or teacher requests an evaluation.”

It should be noted that the district could choose to provide prior written notice of a refusal to evaluate in response to parental request, if appropriate.

Authority: 34 C.F.R. §§ 300.303(a) and 300.503(a)

Question 17: When should standardized assessments be used in a child’s special education evaluation or reevaluation to determine whether a student requires special education and related services?

Answer: The child’s evaluation team, consisting of the IEP Team and other qualified professionals, as appropriate, review existing evaluation data on the child, including evaluations and information provided by the child’s parents, current classroom-based assessments, and observations by teachers; and on the basis of that review, determine what additional data, if any, is needed to determine whether the child is a child with a disability and the educational needs of the child. If additional data is needed for the determination, the team determines

the procedures to use to gather the data; the team may determine that standardized assessment tools will be used as part of the child's evaluation.

As set forth in the federal regulations, in conducting the evaluation or reevaluation, the school district must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child" to assist in determining whether the child is a child with a disability and may "not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability."

Authority: 34 C.F.R. §§ 300.304(b) and (c); and 300.305(a)

Question 18: Must a child receive a "qualifying score" as part of an evaluation to be eligible to receive the related services of either occupational therapy or physical therapy?

Answer: No. As set forth in the federal regulations, school districts must "[n]ot use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child." The IEP Team decides if the evaluations indicate that the child has needs that require related services. The scores may inform but there are not minimum scores required.

Authority: 34 C.F.R. § 300.304(b)(2)

SERVICES, RELATED SERVICE PROVIDERS, IEP REQUIREMENTS

Question 19: Is age a determining factor for the related services provided to students with disabilities?

Answer: The initial provision of related services to individual students is based on the results of a special education evaluation to determine the individual special education needs of a student. However, the age of each student is taken into account (developmental information and information from the parent) as part of the individual special education evaluation for each student.

Authority: 34 C.F.R. §§ 300.301(a) and 300.304(b)(1)

Question 20: Are the related services providers of a student also members of that student's IEP team?

Answer: IDEA does not expressly require that related service providers be members of a student's IEP Team, except in those instances where the related service provider is also the student's special education teacher. However, the federal regulations state that, "At the discretion of the parent or the [school district] . . ." the IEP Team can include ". . . other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate." In Appendix A to Part 300 of the 1999 Code of Federal

Regulations, it is stated that it would be appropriate for a related service provider to be included, if a particular related service is to be discussed as part of the IEP team meeting.

Authority: 34 C.F.R. § 300.321(a)(3) and (6); and *Notice of Interpretation, Appendix A to Part 300, Question 30* (1999 regulations)

Question 21: What are the IEP requirements for related services?

Answer: A student’s IEP must contain: “(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research, to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child --- (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum . . . and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section...”

The IEP must also specify with respect to each service: when the service will begin; how often it will be provided and for what amount of time; and where it will be provided.

Each related service provider must be informed of “his or her specific responsibilities related to implementing the child’s IEP; and the specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP.”

Authority: 34 C.F.R. §§ 300.320(a)(4) and (7); and 300.342(b)(3)

Question 22: Do related services providers write IEP goals; and do they have responsibility for data collection and progress reporting?

Answer: The federal regulations and state rules and statutes do not specify who is responsible for writing IEP goals and who is responsible for data collection and progress reporting. However, pursuant to Minnesota Rule 3525.0550, “The district shall assign a teacher or licensed related service staff who is a member of the pupil’s IEP team as the pupil’s IEP manager to coordinate the instruction and related services for the pupil. The IEP manager’s responsibility shall be to coordinate the delivery of special education services in the pupil’s IEP...”

Authority: Minn. R. 3525.0550

Question 23: Must a student’s IEP include an educational goal for each related service provided?

Answer: No. The IEP is not required to include goals and objectives for related services unless the student receives instruction during the provision of a related service --- in which case the goals and objectives are necessary. “While there is no requirement that an IEP include separate annual goals or short-term instructional objectives for related services, the goals

and objectives in an IEP must address all of the student's identified needs that the IEP team has determined warrant the provision of special education, related services, or supplementary aids and services, and must enable the team to evaluate the effectiveness of each of those services." For example, "...if transportation is being provided solely to enable the student to reach school, no goals or objectives are needed. If, however, instruction will be provided to the student to enable the student to increase the student's independence or improve the student's behavior or socialization during travel to school, then goals and objectives must be included to address the need to increase independence or improve behavior or socialization..."

Authority: *Letter to Hayden*, 22 LRP 3091 (OSEP 1994)

Question 24: Should there be separate therapy goals (i.e., occupational therapy, physical therapy, speech therapy, art therapy) in the IEP?

Answer: IDEA does not establish a specific number of goals that must be in a student's IEP. If a child with a disability needs only modifications or accommodations to progress in an area of the general curriculum, the IEP does not need to include a goal for that area. However, the IEP would have to set forth those modifications or accommodations.

Authority: 34 C.F.R. § 300.320(a)(4); *See* also Question 23 above

Question 25: If the student's IEP does not contain goals for the related services provided, is there another way to document support from the related services provider on the student's IEP?

Answer: Yes. The student's IEP could contain a statement of the related services and supplementary aids and services to be provided to the student, and the statement in the IEP could include when the related service will begin, how often it will be provided, and for what amount of time.

Authority: 34 C.F.R. § 300.320(a)(4) and (7)

Question 26: Is there a method to build flexibility into the student's IEP (i.e., the student's need for more sessions of a related service at the beginning of the year to accommodate new staff)?

Answer: Yes. The IEP can contain more than one statement of the anticipated frequency, location, and duration of a related service to be provided to the student during more than one time period during the one-year time period that the IEP is in effect.

Authority: 34 C.F.R. § 300.320(a)(4) and (7)